



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TESSLER & STEIN
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: OPR, OPB, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened to deal with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order for rent owed based on a 10-Day Notice to End Tenancy for Unpaid Rent issued and served on in April 2014.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and this has been reviewed. The parties were also permitted to make submissions during the hearing. I have considered all of the affirmed testimony and evidence that was properly served.

Preliminary Matter

In addition to the landlord's request for an Order of Possession, the landlord had also checked off the box on the Application for Dispute Resolution form indicating that they are seeking a monetary order for outstanding rental arrears. However, it has been established through testimony from both parties, that since the landlord filed this application, the landlord and tenant entered into a payment agreement for outstanding rent owed. In addition, the parties testified that they signed a Mutual Agreement to End Tenancy effective November 30, 2014.

The Residential Tenancy Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the arbitrator determines that it is appropriate to do so, additional disputes contained in a single application may be severed from the other issues under dispute and dismissed with or without leave to reapply.

Given the above, I decline to proceed with the portion of the application relating to the request for rental arrears under section 67 of the Act, but grant the landlord leave to reapply for the monetary claims in future..

However, the landlord's request for an Order of Possession based on the mutual agreement to end tenancy will still be considered and determined at this hearing.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord acknowledged that, since the application on September 14, 2014, the tenant paid what was owed but has since accrued arrears again. The tenant acknowledged that they have are in arrears for rent for the month of November 2014 and entered into a payment plan, endorsed by the landlord. The tenant also confirmed that they signed a mutual agreement to end tenancy effective November 30, 2014.

Analysis

Section 44(1)(c) of the Act provides that a tenancy agreement can be ended if the landlord and tenant agree in writing to end the tenancy. In this case I find that these parties did enter into such an agreement and that it may be enforced under the Act.

Based on the above, I hereby grant the landlord an Order of Possession effective November 30, 2014. This order is final and binding and may be enforced through a writ obtained from B.C. Supreme Court if necessary.

The monetary claim for rental arrears is severed and dismissed with leave to reapply.

I find that the landlord is entitled to be reimbursed the cost of the application and I order that \$50.00 be retained from the tenant's \$387.50 security deposit leaving \$337.50 security deposit and \$387.50 pet damage deposit still held in trust by the landlord.

Conclusion

The landlord is granted an order of possession based on the Mutual Agreement to End Tenancy signed by the parties. The landlord's monetary claims are hereby dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 04, 2014

Residential Tenancy Branch

